BEFORE THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its Own Motion to Establish Retail Billing and Termination Practices for Telecommunications Carriers	))))))	Docket D.T.E. 06-8

COMMENTS OF MILLER ISAR, INC.
ON BEHALF OF
NON-FACILITIES-BASED INTEREXCHANGE CARRIER CLIENTS

Miller Isar, Inc., a regulatory consulting firm, pursuant to the Department of Telecommunications And Energy's ("Department") April 7, 2006 *Order Opening a Notice of Inquiry to Establish Retail Billing and Termination Practices for Telecommunications Carriers*,[1] and on behalf of several of its non-facilities-based interexchange resale clients (collectively the "Companies"),[2] hereby provides the following responsive comments. Within the context of the Department's investigation, the Companies address the necessity for explicit local exchange carrier ("LEC") obligations to inform *subscribers who initiate primary carrier changes*, of the subscribers' potential existing financial obligations to the former provider before transferring accounts.

The Companies have experienced an alarming increase in instances where unwarranted unauthorized billing complaints have resulted from local exchange carriers' reluctance, unwillingness, or intentional failure to inform subscribers of the potential for remaining contractual financial obligations to the previous provider at the time end users

[1] *Investigation by the Department of Telecommunications and Energy on its Own Motion to Establish Retail Billing and Termination Practices for Telecommunications Carriers*, Docket D.T.E. 06-8, Order Opening a Notice of Inquiry to Establish Retail Billing and Termination Practices for Telecommunications Carriers (April 7, 2006) ["Order"]

[2] The Companies have been granted authority to provide intrastate interexchange telecommunications services in Massachusetts and elsewhere. The Companies have requested anonymity, and are not identified accordingly.

initiate carrier change requests. Frequently local exchange carriers mislead end users, creating the mistaken impression that by assuming responsibility for instituting carrier changes, the LEC will somehow absolve the end user's financial obligations to former providers under existing contracts. Such practices are harmful to all carriers, inconvenience end users, and have ominous anti-competitive implications that shouldbe precluded.

I. Introduction

The Department has generally requested comments "regarding updating and clarifying all provisions of the Practices, [3] developing additional provisions or deleting provisions, as appropriate, and applying the Practices to all of the multiple carriers offering local residential services." Further, the Department has indicated *inter alia* that it will consider, "whether … minimum consumer protections for voice services in Massachusetts," should be required. The Companies focus their comments specifically on an issue of growing operational concern, falling under the Order's section I, "Miscellaneous" category - the obligation of carriers to inform end users who initiate change carriers of potential existing financial obligations, including termination penalties, that end users may have to the former provider – as a matter of consumer protection.

The increasing failure of many LECs – principally incumbent local exchange carriers who gain new or former local exchange and interexchange subscribers - to inform the subscriber's of the potential for standing contractual obligations to the former provider has resulted in repeated unwarranted complaints against service providers who continue to bill former subscribers for service or impose early termination penalties under the terms of legally binding contractual agreements. Further, some LECs implicitly mislead new subscribers by telling new subscribers that the carrier will assume full responsibility for

[3] Rules and Practices Relating to Telephone Service to Residential Customers, still applicable to Verizon Massachusetts ("Verizon") local residential service; Order at 1.

service termination from the former service provider, effectively creating the impression of absolving the subscriber of all financial responsibility to former providers even when the subscriber may still retain contractual service obligations to the former provider.

In order to end such lackadaisical, if not intentionally harmful, inaction and misrepresentation on the part of LECs, and to avoid subjecting reputable companies to the costs and tarnished image resulting from billing complaints arising through no fault of their own, the Companies urge the Commission to consider imposing explicit obligations on LECs to inform end users who initiate carrier changes of potential existing contractual obligations, and encourage end users to ensure that those obligations have been met and accounts properly cancelled, before unilaterally transferring accounts.

II. Current Regulation Does Not Preclude Harmful LEC Practices Leading to Consumers Billing Complaints Against Former Providers When Contractual Obligations Remain.

Although federal and state regulations prohibit the practices of unauthorized account transfers carrier charges, and require affirmative LEC notifications of changes in carriers, these rules do not go far enough in requiring that end users be informed of ongoing contractual obligations to former carriers when initiating account transfers.

The FCC's account verification procedures, as set forth in 47 C.F.R. §64.1100 *et seq.* and Department rules, 220 CMR 13:00 *et seq.*, Consumer Protection from the Unauthorized Changing of Local or Long Distance Telephone Service Providers, establish unambiguous requirements for customer account verifications. Federal Truth-In-Billing regulations, 47 C.F.R. §64.2401 establish obligations for "clear and conspicuous" billing obligations. Department Rules and Practices Relating to Telephone Service to Residential Customers,[4] set

[4] Adopted pursuant to D.P.U. 18448.

forth billing obligations specifically for residential subscribers. Yet none of these regulations address the concerns raised by the Companies herein.

Section 64.4002 of the FCC's rules[5] does impose an affirmative obligation on LECs to provide information available to the LEC to IXCs in instances of subscriber account transfers.

> To the extent that the information is reasonably available to a LEC, the LEC shall provide to an [interexchange carrier] the customer account information described in this section consistent with Sec. 64.4004. *Nothing in this section shall prevent a LEC from providing additional customer account information to an IXC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC Order* [emphasis supplied].

This federal obligation still does not go far enough in requiring LECs to inform end users of potential remaining obligations with the former carrier, nor does it preclude LECs from making such notices to end users.[6]

Massachusetts' C2C guidelines, adapted from those first adopted by the New York Public Service Commission, while containing provisions governing service pre-ordering and ordering obligations among others, also do not explicitly require LECs to inform end users of potential remaining obligations or from misleading subscribers regarding remaining obligations to former providers.[7] This is also true of the Department's mass migration guidelines,[8] which are specifically geared to termination of service to an entire customer base.

---

[5] 47 C.F.R. §64.4002.

[6]

[7] *See* Verizon *Carrier-to-Carrier Guidelines Performance Standards and Reports*, http://www22.verizon.com/wholesale/attachments/east-perf_meas/EastC2Cguidelines_May2005.doc#_Toc92687290

[8] *See, e.g. Proceeding by the Department of Telecommunications and Energy on its own Motion to Develop Requirements for Mass Migrations of Telecommunications Service End-Users*, D.T.E.02-28 (August 7, 2002)

The Companies recognize that neither C2C or Mass Migration Guidelines, nor other Department regulations cited are necessarily the most appropriate vehicles for inclusion of the carrier account transfer obligations the Companies seek. Still, there are currently no explicit regulatory requirements which obligate carriers to provide notice of remaining provider obligations or which preclude acquiring carriers through misleading subscribers about remaining commitments to former providers, even though section 64.4002 provides a regulatory vehicle for such an obligation. As a result, any former service provider is at the mercy of a subscriber's new service provider local exchange carrier's actions and representations.

III. Compliant Interexchange Carriers Unwittingly Experience Harmful Billing Complaints Because of LEC Failure to Inform End Users of Remaining Financial Obligations to Former Providers, or Due to Misleading Representations.

First and foremost, the Companies recognize their own obligations to ensure that subscribers who enter into contractual agreements clearly recognize the subscribers' responsibilities under those agreements. Although the Companies fully expect subscribers to abide by contractual obligations and request that presubscribed customers provide affirmative service termination notice if planning to change carriers, in reality few subscribers ever inform former service providers of account changes, even when contractual obligations remain.

LECs failures to provide end users with a competitively-neutral notice that the end users who initiate account transfers may have remaining obligations to former subscribers, lull end users into complacency particularly when the LECs misrepresent an ability to terminate service with a former provider on a subscriber's behalf. Such misrepresentation implies that the LECs have access to customer proprietary network information such as the end user's former provider's billing records and/or contracts, and may remove any remaining obligation on the end user by a former carrier. The potential for anti-competitive mischief exists as LECs wish to avoid creating an opportunity where the end user may communicate with the former provider.

Whether motivated by intent or simply disregard, the failure a LEC to inform an end user of potential remaining obligations to a former provider and/or to unilaterally terminate service on behalf of a subscriber without verification of potential contractual obligations remaining on a subscriber account, invites the complaints the Companies have received. These complaints divert limited company resources, are costly to resolve, and unfairly harm the reputation of the former provider.

Each of the Companies have experienced complaints from former subscribers or from state regulatory utility commissions on a former subscribers' behalf where, in each instance, upon investigation there was no evidence that LEC notice was ever provided to the former subscriber regarding remaining contractual obligations to the Companies. Although the Companies fully comply with state and federal regulations, the failure of LECs to inform subscribers to verify remaining subscriber obligations expose the Companies to unwarranted complaints.

Further, when responding to former subscriber complaints, the Companies have repeatedly been informed by their former customers that the former customers had been told by the LEC that the LEC would assume full responsibility for account termination. A LEC's assumed agency for a subscriber and assured the subscriber that service from the former provider would be terminated without verifying whether contractual commitments, such as volume and term commitments, applied; "anything to get the subscriber." This is analogous to a credit card company agreeing to terminate a holder's account with another bank, without verification of remaining charges on the former account. There is also an underlying implication that the acquiring company has access to customer proprietary network information held by the existing carrier. Either failure to notify or assumption of agency without verifying remaining contractual obligations is a disservice to the subscriber and harmful to complaint providers.

From the subscriber's perspective, the subscriber experiences a high level of frustration and inconvenience, while exposing the subscriber to unnecessary early termination penalties, which may apply, due to the neglect or misrepresentation of the acquiring carrier.

From the former provider's perspective, each complaint requires costly diversion of resources to investigate the specifics of the complaint, respond to former subscribers and in

some instances to state and federal regulators, to make retroactive changes in account databases and billing systems, and to make refunds where applicable. In instances where subscribers have entered into contractual arrangements for service, the subscriber has received discounts in return for commitments that cannot be unilaterally broken simply through transferring an account to another provider.

Consumer complaints tarnish the reputation of the Companies in the eyes of former subscribers, potential new subscribers, and regulators, who understandably view a majority of companies who experience complaints as contributing to the circumstances that resulted in the complaints. Ultimately, the Companies are adversely under any circumstances.

IV. A Local Exchange Carrier Has Little Incentive to Provide Timely Account Change Notices or Advise Subscriber's of Exiting Obligations.

In the absence of specific requirements, the LECs have little limited incentive to provide timely notice or be concerned about remaining subscriber obligations to former providers. At best, operational demands may be deemed such as to preclude any effort to ensure notices are provided to end users. The prevailing thought may be that notice of the transfer will somehow take care of itself; that the end user will do the right thing. At worst, failure to provide account transfer notice or assume full agency for service termination may be predicated on the fact that the LEC does not want to give the former carrier any opportunity to contact the subscriber on the presumption that the carrier will attempt to "win back" the subscriber or otherwise retain the subscriber. [9] The net effect is the same. The subscriber's former carrier continues to legitimately bill the former subscriber for service under a contractual obligation which the end user does may believe no longer exists, prompting complaints.

[9] Interestingly, the Companies note that the disturbing trend of LEC failure to notify end users of remaining obligations to former providers did not exist prior to incumbent LEC in-region interLATA market entry.

V. Service Termination Rules Should Explicitly Require Timely Account Transfer Notice Obligations and Representations Made to New Subscribers.

Account transfer notifications and representations to subscribers should not be left to chance, particularly as failure to make timely notice precipitates public aggravation, inconvenience, and severe risk of complaints, particularly to former provider. Promulgation of simplified requirements that obligate LECs to inform end users of remaining contractual obligations to former providers should now be addressed within the scope of service termination regulations. These requirements should explicitly establish that in the event that an end user initiates an interexchange carrier change, the LEC is to provide affirmative notice to the end user that remaining obligations to the former provider may exist, and encourage the end user to ensure that any remaining obligations are addressed. Further the acquiring carrier should be required to document when notice was provided and by which entity, *e.g.* the local exchange or interexchange carrier as part of the subscriber's record, to verify compliance.

LECs should also be expressly prohibited to mislead subscribers by assuming agency for terminating the subscriber's service with the former subscriber. Such a prohibition on misleading statements would compel acquiring carriers to disclosing that the subscriber may have existing obligations that may preclude a transfer unless the obligations are first addressed.[10] The LECs are already compensated for transferring accounts. The additional notification requirement contemplated by the Companies would be nothing more than an additional reminder to end users.

[10] LECs found making willful misrepresentations regarding their ability to terminate an end user's former provider account when remaining end user obligations apply, should be required to indemnify the former provider.

VI. Conclusion

A lack of explicit obligations on LECs to inform end users of potential remaining contractual obligations to former providers when the end user initiates a change in carrier, effectively contributes to consumer aggravation, complaints, and the exposure of reputable service providers to adverse effects of consumer complaints. In the absence of such obligations, LECs have no incentive to act responsibly, and in fact may benefit from failing to do so. Although the Companies accept ultimate responsibility for ensuring subscribers who enter into contractual agreements meet their obligations, the Companies maintain that the LECs should also share some responsibility for informing end users of potential remaining obligations to former carriers before initiating account transfers. The Companies urge the Department to institute a new requirement that LECs affirmatively notify end users who initiate account transfers of potential remaining contractual obligations and urge them to confirm whether such obligations remain before transferring accounts, accordingly.

Respectfully submitted this 5th day of June, 2006.

MILLER ISAR, INC.

By: _____

Andrew O. Isar
7901 Skansie Avenue, Suite 240
Gig Harbor, WA 98335
Telephone: 253.851.6700

The Companies' Regulatory Consultants